

BEFORE THE  
POSTAL REGULATORY COMMISSION  
WASHINGTON, D.C. 20268-0001

COMPETITIVE PRODUCT LIST  
ADDING ROUND-TRIP MAILER

Docket No. MC2013-57

COMPETITIVE PRODUCT LIST  
ADDING ROUND-TRIP MAILER (MC2013-57)

Docket No. CP2013-75

**UNITED STATES POSTAL SERVICE APPLICATION FOR NONPUBLIC  
TREATMENT OF PORTIONS OF ITS RESPONSE TO RESPONSE OF GAMEFLY,  
INC., TO APRIL 4, 2014, USPS REPLY COMMENTS**  
(April 24, 2014)

Pursuant to 39 C.F.R. § 3007.21, the United States Postal Service files the attached application for nonpublic treatment of portions of the United States Postal Service Response to Response of GameFly, Inc., to April 4, 2014, USPS Reply Comments.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

By its attorneys:

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## **APPLICATION FOR NONPUBLIC TREATMENT**

In accordance with 39 C.F.R. § 3007.21 and Order No. 225, the United States Postal Service applies for nonpublic treatment of portions of the United States Postal Service Response to Response of GameFly, Inc., to April 4, 2014, USPS Reply Comments filed under seal. This material reflects volume and revenue information for GameFly, Inc. through the first quarter of FY2014.

By operation of 39 U.S.C. § 410(c)(2), information of a commercial nature, which under good business practice would not be publicly disclosed, is not required to be disclosed to the public. The Commission may determine the appropriate level of confidentiality to be afforded to such information after weighing the nature and extent of the likely commercial injury to the Postal Service against the public interest in maintaining the financial transparency of a government establishment competing in commercial markets. 39 U.S.C. § 504(g)(3)(A). Because the information covered by this application falls within the scope of information not required to be disclosed publicly, the Postal Service asks the Commission to support its determination that these materials are exempt from public disclosure and grant its application for their nonpublic treatment.

**(1) The rationale for claiming that the materials are nonpublic, including the specific statutory basis for the claim, and a statement justifying application of the provision(s);**

The redacted material contains commercial information, which under good business practice, would not be disclosed publicly. Therefore, it should be exempt from mandatory disclosure pursuant to 39 U.S.C. § 410(c)(2) and 5 U.S.C. § 552(b)(3) and (4).<sup>1</sup> The Postal Service believes that no mailer or mail service provider would assent to disclosure of the very specific customer data reflected in the redacted material, and the Postal Service believes that no commercial enterprise would disclose such information regarding its customers.

**(2) Identification, including name, phone number, and email address for any third party who is known to have a proprietary interest in the materials, or if such an identification is sensitive, contact information for a Postal Service employee who shall provide notice to that third party;**

The contact information for GameFly counsel appears below.

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<sup>1</sup> In appropriate circumstances, the Commission may determine the appropriate level of confidentiality to be afforded to such information after weighing the nature and extent of the likely commercial injury to the Postal Service against the public interest in maintaining the financial transparency of a government establishment competing in commercial markets. 39 U.S.C. § 504(g)(3)(A). The Commission has indicated that “likely commercial injury” should be construed broadly to encompass other types of injury, such as harms to privacy, deliberative process, or law enforcement interests. PRC Order No. 194, Second Notice of Proposed Rulemaking to Establish a Procedure for According Appropriate Confidentiality, Docket No. RM2008-1 (Mar. 20, 2009), at 11.

**(3) A description of the materials claimed to be nonpublic in a manner that, without revealing the materials at issue, would allow a person to thoroughly evaluate the basis for the claim that they are nonpublic;**

The redacted material contains volume and revenue information for both Netflix and GameFly through the first quarter of FY2014.

**(4) Particular identification of the nature and extent of commercial harm alleged and the likelihood of such harm;**

If the redacted material were to be disclosed publicly, the Postal Service considers it is quite likely that it, as well as the party identified above, would suffer commercial harm. Competitors could use the data to draw business away from each affected party, causing the affected party to lose revenue.

**(5) At least one specific hypothetical, illustrative example of each alleged harm;**

**Harm:** A mailer loses revenue to a competitor.

**Hypothetical:** The redacted material is disclosed publicly. Mailer A's volumes and revenues are disclosed. Company B, a business in competition with Mailer A, obtains a copy of the unredacted version of the financial work papers. Company B analyzes the work papers to assess Mailer A's underlying costs and market size. Company B uses that information as a baseline to target Mailer A's customer base and undercut Mailer A's prices.

**(6) The extent of protection from public disclosure deemed to be necessary;**

The Postal Service maintains that the materials filed nonpublicly should be withheld from persons in industries that provide consumer access to digitized

entertainment content, as well as their consultants and attorneys, and from any customers or potential customers of industry participants.

**(7) The length of time deemed necessary for the nonpublic materials to be protected from public disclosure with justification thereof; and**

The Commission's regulations provide that nonpublic materials shall lose nonpublic status ten years after the date of filing with the Commission, unless the Commission or its authorized representative enters an order extending the duration of that status. 39 C.F.R. § 3007.30.

**(8) Any other factors or reasons relevant to support the application.**

None.

***Conclusion***

For the foregoing reasons, the Postal Service requests that the Postal Regulatory Commission grant its application for nonpublic treatment of the redacted portion of the United States Postal Service Response to Response of GameFly, Inc., to April 4, 2014, USPS Reply Comments.